

Legal Study on Marriage Rights of Homosexuals in China

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Abstract: The issue of equality related to homosexuality has always been a hot spot in anti-discrimination. Through years of legal and cultural changes, the equal rights of homosexuals in China have been guaranteed to some extent. However, gay people in China have not been fully treated fairly, especially when it comes to marriage rights. Article 2 of the Marriage Act only regulates heterosexual marriage and does not cover same-sex marriage. This paper explores the legal status and challenges surrounding the marriage rights of homosexuals in China. By examining current legislation, judicial cases, and societal perspectives, the study identifies the legal barriers faced by the LGBTQ+ community in achieving marriage equality. Given that Chinese law currently does not recognize same-sex marriages, this research seeks to highlight the need for legal reforms to ensure equal treatment of homosexuals in marriage laws. The paper also proposes legal amendments, improved law enforcement, and societal education to foster greater inclusivity and fairness in China.

Keywords: Marriage Rights of Homosexuals Marriage Law of China, legal recommendation, anti-discrimination.

1. Introduction

As the global LGBTQ+ rights movement advances, more countries have begun to recognize and protect the marriage rights of same-sex couples[1]. However, despite increasing social acceptance of the LGBTQ+ community in China, the country's legal system still does not grant legal status to same-sex marriages[2]. China's Marriage Law explicitly defines marriage as a union between a man and a woman, ignoring the growing calls from the LGBTQ+ community for marriage equality. This legal exclusion results in unequal treatment and contributes to the marginalization of the LGBTQ+ community[3]. In a significant case reflecting the legal challenges faced by LGBTQ+ individuals in China, a same-sex couple from Changsha, China, applied for marriage registration but was denied by the Civil Affairs Bureau. The couple sued the bureau, but the court ultimately rejected their claim, citing existing Chinese law, which recognizes only heterosexual marriages. This case illustrates the systemic lack of legal recognition and protection for same-sex couples, emphasizing the ongoing inequality and legal barriers faced by the LGBTQ+ community in their fight for marriage equality in China.

This research aims to identify the shortcomings in the current legal framework and advocate for changes to the Marriage Law to ensure equal treatment for homosexual individuals in China.

The central issue addressed by this research is the lack of legal recognition and protection for same-sex marriages in China. Homosexual couples face legal obstacles that prevent them from enjoying rights such as property inheritance, joint health insurance, and decision-making in medical contexts. Without the protection of marriage laws, these couples are denied the full range of benefits granted to heterosexual couples, leading to significant legal and social disadvantages. This research aims to identify the specific legal gaps and propose practical solutions to protect the marriage rights of homosexual individuals in China.

The goal of this study is to explore potential legal reforms that could protect the marriage rights of homosexuals in China, thereby promoting legal equality. By examining existing legislation and legal precedents, the study seeks to highlight the inconsistencies and biases in Chinese law that prevent the recognition of same-sex marriages. This research also aims to encourage public discourse on LGBTQ+ rights in China and provide a basis for future legal reforms. In doing so, it contributes to the larger global movement toward marriage equality and social justice.

2. China's current Same-Sex marriage laws and the problems

2.1. Current Legal Provisions

China's Marriage Law, last revised in 2001, explicitly defines marriage as the union of one man and one woman. Article 2 of the Marriage Law of the People's Republic of China, which states: "The marriage system of freedom of marriage, monogamy and equality between men and women shall be implemented." There are no provisions for the recognition of same-sex relationships in Chinese national law. Although LGBTQ+ individuals enjoy certain individual rights, there are no legal protections that specifically address their familial or marital rights[4]. China's Marriage Law, last revised in 2001, explicitly defines marriage as the union of one man and one woman[5]. Local administrative regulations and other normative documents also fail to provide recognition or protection for same-sex couples.

Moreover, court cases involving homosexual couples attempting to register marriages or challenge existing laws have been uniformly unsuccessful. In 2016, China witnessed its first legal challenge to the prohibition of same-sex marriage when a gay couple in Changsha attempted to register their marriage. The court ruled against them, reaffirming the traditional definition of marriage as a heterosexual institution, contending that China's marriage law has made special provisions on the basic procedures for applying for marriage and handling marriage registration, and relevant laws and regulations in China clearly stipulate that the subject of marriage refers to both men and women who meet the legal conditions for marriage. What's more, the refuters think that the court is forced by the pressure of the case registration system to file the case incorrectly, and starting a lawsuit that is bound to lose is a waste of judicial resources[6]. Such cases demonstrate the rigidity of Chinese marriage laws and the lack of legal recourse available to LGBTQ+ individuals.

2.2. Problems and Impact of Current Legal Protection for Same-Sex Marriage

The absence of legal provisions for same-sex marriage results in numerous issues. First and foremost, it denies LGBTQ+ couples basic human rights, such as the right to marry and form a family. In addition, the lack of legal recognition of same-sex relationships denies these couples access to a range of legal and financial benefits, including inheritance rights, medical decision-making authority, and social security benefits like pension sharing.

From a societal perspective, the exclusion of same-sex couples from marriage laws perpetuates social inequalities. It reinforces negative stereotypes and fuels discrimination against LGBTQ+ individuals, making them more vulnerable to stigma, family rejection, and social isolation. As a result,

homosexual couples often face immense pressure to conform to heteronormative expectations, including entering into heterosexual marriages to meet societal and familial expectations.

Moreover, the legal invisibility of same-sex marriages affects the stability and security of LGBTQ+ families. Without the protections afforded by marriage, homosexual couples have limited legal avenues to protect their assets, ensure parental rights, or secure spousal rights in the event of a medical emergency or death. This legal exclusion forces many LGBTQ+ couples to navigate complex and often insurmountable legal obstacles to achieve even basic familial rights.

From a family perspective, the societal rejection of same-sex marriage often creates intense pressure within families, as LGBTQ+ individuals face expectations to conform to traditional norms of heterosexual marriage. Many LGBTQ+ people struggle with maintaining authentic relationships with their families due to this pressure, leading to emotional strain and family rifts[7]. Without legal or social validation, they may feel forced to hide their true identities or engage in marriages of convenience, which can further harm mental health and perpetuate feelings of isolation within the family unit.

3. Recommendations for Improving Legal Protection for Same-Sex Marriage in China

3.1. Legal Amendments

To address the legal challenges faced by homosexual couples, it is imperative to revise the Marriage Law[8]. From a societal perspective, the exclusion of same-sex couples from marriage laws perpetuates social inequalities[9]. The definition of marriage should be expanded to encompass "two consenting adults," rather than being restricted to one man and one woman. By doing so, China can ensure that same-sex couples have the legal right to marry and enjoy the full range of legal protections and benefits that come with marriage.

Amendments to the Marriage Law should also include provisions that ensure equal inheritance rights, joint custody of children, and access to spousal benefits such as health insurance and pension sharing for same-sex couples. These changes would represent a major step toward legal equality and help address the widespread discrimination and inequality faced by the LGBTQ+ community in China.

3.2. Consistent Legal Enforcement

Along with amending the law, consistent enforcement across the nation is crucial to prevent regional discrepancies. Initial legal reforms, if not uniformly implemented, could lead to disparities between legal intentions and real-world outcomes. Even if some regions show support for same-sex marriages, uneven enforcement would undermine these protections. Therefore, all relevant authorities must commit to consistently applying the law from its introduction and over time, ensuring the reforms achieve their intended impact nationwide without being affected by local biases or misinterpretations.

3.3. Social Education

Legal reforms alone cannot change societal attitudes. A comprehensive education campaign is needed to raise public awareness about LGBTQ+ rights and combat the cultural prejudices that exist against same-sex relationships. Government and civil society organizations can work together to promote understanding and acceptance of the LGBTQ+ community through public education campaigns, school curriculums, and media programs.

Promoting LGBTQ+ rights through education can help reduce societal stigma and foster a more inclusive environment where homosexual couples feel safe and accepted. Changing public attitudes is essential for the successful implementation of any legal reforms and for ensuring that LGBTQ+ individuals are treated with dignity and respect in all aspects of life.

3.4. Real media coverage

Chinese media need to strengthen the media's truthful and neutral reporting. The current Chinese society tends to have tinted glasses when scrutinizing homosexuality, and the media should take social responsibility to report objectively and neutrally so that the whole society can understand homosexuality and thus accept it. In order to cater to the public's curiosity and desire for privacy, and in pursuit of greater commercial interests and media exposure, some of the Chinese communication media excessively focus on homosexual news on the dark side, labeling them as criminals, psychological illness, AIDS, etc. This demonizing and pandering tactic of preconceived notions has directly led to the public's prejudice and isolation of homosexual groups. What's more, some media people wear "tinted glasses" to treat the gay community, coupled with their own unprofessional knowledge base and narrow perception, they can not objectively and accurately show this group to the public, and the subjective factors in the report mislead the public, further aggravating the prejudice and misunderstanding. Therefore, it is especially important for the media to take social responsibility to report homosexual news in a truthful, neutral and objective way, so that the homosexual community can go farther and more equal in the pursuit of the right to speak and equal rights. The existing problems of the homosexual community are also the real problems faced by the whole society, and people need to stand under the sun and face them together. The media should abide by the constitution, laws and administrative regulations, restrain their behavior with legal awareness, and restore the truest life of the homosexual community to the public through in-depth investigation, truthful interviews, and comprehensive records.

4. Conclusion

The legal exclusion of same-sex marriages in China reflects a broader issue of inequality and discrimination faced by the LGBTQ+ community. By examining the current legal status of same-sex marriage in China, this study highlights the significant challenges that homosexual couples face in securing basic rights and legal recognition. To address these issues, it is essential to amend the Marriage Law to include same-sex couples, ensure the consistent enforcement of new legal provisions, and promote societal education on LGBTQ+ rights.

Legal reforms in this area are not only necessary for protecting the rights of homosexual individuals but also for advancing broader goals of social justice and equality in China[10]. Moving forward, future research should explore specific legal reform strategies and examine the potential social, legal, and economic impacts of recognizing same-sex marriage. Through a combination of legal and societal efforts, China can create a more inclusive and equitable society where all individuals, regardless of sexual orientation, can enjoy the same rights and opportunities.

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